

**[DISCUSSION DRAFT]**112<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION**H. R.** \_\_\_\_\_

To amend the Communications Act of 1934 to provide for greater transparency and efficiency in the procedures followed by the Federal Communications Commission.

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**IN THE HOUSE OF REPRESENTATIVES**

M\_\_\_\_. \_\_\_\_\_ introduced the following bill; which was referred to the  
Committee on \_\_\_\_\_

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**A BILL**

To amend the Communications Act of 1934 to provide for greater transparency and efficiency in the procedures followed by the Federal Communications Commission.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Federal Communica-  
5       tions Commission Process Reform Act of 2011”.

1 **SEC. 2. FCC PROCESS REFORM.**

2 (a) IN GENERAL.—The Communications Act of 1934  
3 (47 U.S.C. 151 et seq.) is amended by inserting after sec-  
4 tion 5 the following new section:

5 **“SEC. 5A. TRANSPARENCY AND EFFICIENCY.**

6 “(a) RULE MAKING REQUIREMENTS.—

7 “(1) REQUIREMENTS FOR NOTICES OF PRO-  
8 POSED RULE MAKING.—

9 “(A) CERTAIN PRIOR ACTION REQUIRED.—

10 The Commission may not issue a notice of pro-  
11 posed rule making unless, during the 3-year pe-  
12 riod preceding the issuance of such notice, the  
13 Commission has sought public comment  
14 through a notice of inquiry, a notice of pro-  
15 posed rule making, or a notice on a petition for  
16 rule making on the same or a substantially  
17 similar subject matter.

18 “(B) CONTENTS.—The Commission shall  
19 include in each notice of proposed rule mak-  
20 ing—

21 “(i) the specific language of the pro-  
22 posed rule or the proposed modification or  
23 deletion of an existing rule; and

24 “(ii) in the case of a proposal that  
25 may impose additional burdens on industry  
26 or consumers, proposed performance meas-

1                   ures for evaluating the effectiveness of the  
2                   proposal.

3                   “(C) MINIMUM COMMENT PERIOD.—The  
4                   Commission shall provide in each notice of pro-  
5                   posed rule making a 30-day period for the sub-  
6                   mission of comments and an additional 30-day  
7                   period for the submission of reply comments on  
8                   such notice of proposed rule making.

9                   “(2) REQUIREMENTS FOR FINAL RULES.—Ex-  
10                  cept as provided in the 3rd sentence of section  
11                  553(b) of title 5, United States Code, the Commis-  
12                  sion may not adopt, modify, or delete a final rule  
13                  unless—

14                  “(A) during the 3-year period preceding  
15                  the adoption, modification, or deletion, the  
16                  Commission has issued a notice of proposed  
17                  rule making that complies with the require-  
18                  ments of paragraph (1) on the same or a sub-  
19                  stantially similar subject matter;

20                  “(B) the specific language of the adopted  
21                  rule or the modification or deletion of an exist-  
22                  ing rule is a logical outgrowth of the specific  
23                  language required to be included in such notice  
24                  under paragraph (1)(B)(i); and

1           “(C) in the case of the adoption of a rule  
2           or the modification or deletion of an existing  
3           rule that may impose additional burdens on in-  
4           dustry or consumers, the order contains—

5                   “(i) an identification and analysis of  
6                   the market failure and actual harm to con-  
7                   sumers that the adoption, modification, or  
8                   deletion will prevent;

9                   “(ii) a cost-benefit analysis of the  
10                  adopted rule or the modification or dele-  
11                  tion of an existing rule; and

12                  “(iii) performance measures for evalu-  
13                  ating the effectiveness of the adopted rule  
14                  or the modification or deletion of an exist-  
15                  ing rule.

16           “(b) ADEQUATE DELIBERATION BY COMMIS-  
17           SIONERS.—The Commission shall by rule establish proce-  
18           dures for—

19                   “(1) informing all Commissioners of the options  
20                   available to the Commission for resolving a petition,  
21                   complaint, application, rule making, or other pro-  
22                   ceeding;

23                   “(2) ensuring that all Commissioners have ade-  
24                   quate time, prior to being required to decide a peti-  
25                   tion, complaint, application, rule making, or other

1 proceeding (including at a meeting held pursuant to  
2 section 5(d)), to review the proposed Commission de-  
3 cision document, including any specific language  
4 that is proposed to be adopted as, modified in, or de-  
5 leted from a rule; and

6 “(3) publishing the text of agenda items in ad-  
7 vance of an open meeting so that the public has the  
8 opportunity to review the text before a vote is taken.

9 “(c) NONPUBLIC COLLABORATIVE DISCUSSIONS.—

10 “(1) IN GENERAL.—Notwithstanding section  
11 552b of title 5, United States Code, 3 or more Com-  
12 missioners may hold a meeting that is closed to the  
13 public to discuss official business if—

14 “(A) a vote or any other agency action is  
15 not taken at such meeting;

16 “(B) each person present at such meeting  
17 is a Commissioner, an employee of the Commis-  
18 sion, a member of a joint board established  
19 under section 410, or a person on the staff of  
20 such a joint board;

21 “(C) for each political party of which any  
22 Commissioner is a member, at least 1 Commis-  
23 sioner who is a member of such political party  
24 is present at such meeting, and, if any Commis-  
25 sioner has no political party affiliation, at least

1           one unaffiliated Commissioner is present at  
2           such meeting; and

3           “(D) an attorney from the Office of Gen-  
4           eral Counsel of the Commission is present at  
5           such meeting.

6           “(2) DISCLOSURE OF NONPUBLIC COLLABO-  
7           RATIVE DISCUSSIONS.—Not later than 5 days after  
8           the conclusion of a meeting held under paragraph  
9           (1), the Commission shall publish on its website a  
10          disclosure of such meeting, including—

11           “(A) a list of the persons who attended  
12          such meeting; and

13           “(B) a summary of the matters discussed  
14          at such meeting, except for such matters as the  
15          Commission determines may be withheld under  
16          section 552b(c) of title 5, United States Code.

17           “(3) PRESERVATION OF OPEN MEETINGS RE-  
18          QUIREMENTS FOR AGENCY ACTION.—Nothing in this  
19          subsection shall limit the applicability of section  
20          552b of title 5, United States Code, with respect to  
21          a meeting of Commissioners other than that de-  
22          scribed in paragraph (1).

23           “(d) INITIATION OF ITEMS BY BIPARTISAN MAJOR-  
24          ITY.—The Commission shall by rule establish procedures  
25          for allowing a majority of Commissioners to direct Com-

1 mission staff to draft an order, decision, report, or action  
2 for review by the Commission. Such procedures shall re-  
3 quire that such majority include, for each political party  
4 of which any Commissioner is a member, at least 1 Com-  
5 missioner who is a member of such political party, and,  
6 if any Commissioner has no political party affiliation, at  
7 least one unaffiliated Commissioner.

8 “(e) PUBLIC REVIEW OF CERTAIN REPORTS AND EX  
9 PARTE COMMUNICATIONS.—Except as provided in the 3rd  
10 sentence of section 553(b) of title 5, United States Code,  
11 the Commission may not rely, in any order, decision, re-  
12 port, or action, on—

13 “(1) a statistical report or report to Congress,  
14 unless the Commission has made such report avail-  
15 able for comment for not less than a 30-day period  
16 prior to the adoption of such order, decision, report,  
17 or action; or

18 “(2) an ex parte communication or any filing  
19 with the Commission, unless the public has been af-  
20 farded adequate notice of and opportunity to re-  
21 spond to such communication or filing, in accord-  
22 ance with procedures to be established by the Com-  
23 mission by rule.

24 “(f) PUBLICATION OF STATUS OF PENDING  
25 ITEMS.—The Commission shall by rule establish proce-

1 dures for informing the public of the status of all open  
2 rule making proceedings and all proposed orders, deci-  
3 sions, reports, or actions pending review by the Commis-  
4 sion, including which Commissioners have not cast a vote  
5 on an order, decision, report, or action that has been pend-  
6 ing review for more than 60 days.

7       “(g) DEADLINES FOR ACTION.—The Commission  
8 shall by rule establish deadlines for any Commission order,  
9 decision, report, or action for each of the various cat-  
10 egories of petitions, applications, complaints, and other fil-  
11 ings seeking Commission action, including filings seeking  
12 action through authority delegated under section 5(c)(1).

13       “(h) PROMPT RELEASE OF CERTAIN REPORTS AND  
14 DECISION DOCUMENTS.—

15               “(1) STATISTICAL REPORTS AND REPORTS TO  
16 CONGRESS.—

17               “(A) RELEASE SCHEDULE.—The Commis-  
18 sion shall catalog, identify, and publish the an-  
19 ticipated release schedule for all statistical re-  
20 ports and reports to Congress regularly or  
21 intermittently released by the Commission and  
22 shall thereafter publish such schedule at least  
23 annually.

24               “(B) PUBLICATION DEADLINES.—The  
25 Commission shall publish each report identified



1 in the schedule published under subparagraph  
2 (A) not later than the date indicated in such  
3 schedule for the anticipated release of such re-  
4 port.

5 “(2) DECISION DOCUMENTS.—The Commission  
6 shall publish each order, decision, report, or action  
7 not later than 7 days after the date of the adoption  
8 of such order, decision, report, or action.

9 “(3) EFFECT IF DEADLINES NOT MET.—

10 “(A) NOTIFICATION OF CONGRESS.—If the  
11 Commission fails to publish an order, decision,  
12 report, or action by a deadline described in  
13 paragraph (1)(B) or (2), the Commission shall,  
14 not later than 7 days after such deadline and  
15 every 14 days thereafter until the publication of  
16 the order, decision, report, or action, notify by  
17 letter the chairpersons and ranking members of  
18 the Committee on Energy and Commerce of the  
19 House of Representatives and the Committee  
20 on Commerce, Science, and Transportation of  
21 the Senate. Such letter shall identify such  
22 order, decision, report, or action, specify the  
23 deadline, and describe the reason for the delay.  
24 The Commission shall also publish such letter  
25 on its website.

1 “(B) NO IMPACT ON EFFECTIVENESS.—

2 The failure of the Commission to publish an  
3 order, decision, report, or action by a deadline  
4 described in paragraph (1)(B) or (2) shall not  
5 render such order, decision, report, or action in-  
6 effective when published.

7 “(i) BIENNIAL SCORECARD REPORTS.—

8 “(1) IN GENERAL.—The Commission shall sub-  
9 mit to the Committee on Energy and Commerce of  
10 the House of Representatives and the Committee on  
11 Commerce, Science, and Transportation of the Sen-  
12 ate a biennial report on the performance of the  
13 Commission in meeting the deadlines established  
14 under subsections (g), (h)(1)(B), and (h)(2).

15 “(2) CONTENTS.—Each report required by  
16 paragraph (1) shall contain detailed statistics on  
17 such performance, including, in the case of perform-  
18 ance in meeting the deadlines established under sub-  
19 section (g), with respect to each Bureau of the Com-  
20 mission and each category established under such  
21 subsection—

22 “(A) the number of orders, decisions, re-  
23 ports, or actions pending on the date of such  
24 report;

1           “(B) the number of orders, decisions, re-  
2           ports, or actions pending on the date of such  
3           report that were not completed by the deadlines  
4           established under such subsection and the aver-  
5           age length of time those items have been out-  
6           standing; and

7           “(C) for orders, decisions, reports, or ac-  
8           tions that were completed during the period  
9           covered by the report, the average time between  
10          initiation and completion and the percentage  
11          completed by the deadlines established under  
12          such subsection.

13       “(j) TRANSACTION REVIEW STANDARDS.—

14           “(1) IN GENERAL.—The Commission shall con-  
15          dition its approval of a transfer of lines, a transfer  
16          of licenses, or any other transaction under sections  
17          214, 309, 310, or any other provision of this Act  
18          only if—

19           “(A) the imposed condition is narrowly tai-  
20          lored to remedy a harm that arises as a direct  
21          result of the specific transfer or specific trans-  
22          action that this Act empowers the Commission  
23          to review; and

1 “(B) the Commission could adopt a rule  
2 substantially similar to the imposed condition  
3 under its rule making authority.

4 “(2) EXCLUSIONS.—In reviewing a transfer of  
5 lines, a transfer of licenses, or any other transaction  
6 under sections 214, 309, 310, or any other provision  
7 of this Act, the Commission may not consider a vol-  
8 untary commitment of a party to such transfer or  
9 transaction unless the Commission could adopt that  
10 voluntary commitment as a condition under para-  
11 graph (1).

12 “(k) COMMUNICATIONS MARKETPLACE REPORT.—

13 “(1) IN GENERAL.—In every odd-numbered  
14 year (beginning with 2013), the Commission shall  
15 submit to the Committee on Energy and Commerce  
16 of the House of Representatives and the Committee  
17 on Commerce, Science, and Transportation of the  
18 Senate a report on the state of the communications  
19 marketplace.

20 “(2) CONTENTS.—Each report required by  
21 paragraph (1) shall identify the challenges and op-  
22 portunities in the communications marketplace for  
23 jobs, the economy, the expansion of existing busi-  
24 nesses, and competitive entry as well as the Commis-

1       sion’s agenda to address the identified issues over  
2       the course of the next 2-year period.

3       “(l) DEFINITIONS.—The terms ‘agency action’, ‘ex  
4       parte communication’, and ‘rule’ have the meanings given  
5       such terms in section 551 of title 5, United States Code.”.

6       (b) EFFECTIVE DATE AND IMPLEMENTING RULES.—

7               (1) EFFECTIVE DATE.—

8                       (A) IN GENERAL.—The requirements of  
9                       section 5A of the Communications Act of 1934,  
10                      as added by subsection (a), shall apply begin-  
11                      ning on the date that is 6 months after the date  
12                      of the enactment of this Act.

13                     (B) PRIOR NOTICES OF PROPOSED RULE-  
14                     MAKING.—For purposes of paragraph (2) of  
15                     section 5A(a) of such Act, all notices of pro-  
16                     posed rule making released prior to the date of  
17                     enactment of this Act shall be deemed to have  
18                     complied with paragraph (1) of such section.

19               (2) RULES.—The Federal Communications  
20       Commission shall promulgate the rules necessary to  
21       carry out such section 5A not later than 1 year after  
22       the date of the enactment of this Act.

23               (3) PROCEDURES FOR ADOPTING RULES.—Not-  
24       withstanding paragraph (1)(A), in promulgating  
25       rules to carry out such section 5A, the Federal Com-

1       munications Commission shall comply with the re-  
2       quirements of subsections (a) and (h)(2) of such sec-  
3       tion.

4   **SEC. 3. EFFECT ON OTHER LAWS.**

5       Nothing in this Act or the amendments made by this  
6   Act shall relieve the Federal Communications Commission  
7   from any obligations under title 5, United States Code,  
8   except where otherwise expressly provided.